

ARKANSAS SUPREME COURT

No. 07-813

PHILIP EUGENE PARMLEY
Appellant

v.

LARRY NORRIS, DIRECTOR,
ARKANSAS DEPARTMENT OF
CORRECTION
Appellee

Opinion Delivered October 9, 2008

APPEAL FROM THE CIRCUIT COURT
OF JACKSON COUNTY, CV 2007-116,
HON. HAROLD S. ERWIN, JUDGE

REMANDED.

PER CURIAM

A judgment and commitment order entered on March 26, 2004, in Garland County Circuit Court indicates that a jury found appellant Philip Eugene Parmley, also known as Phillip Eugene Parmley, guilty of possession of drug paraphernalia with intent to manufacture methamphetamine and sentenced him to 480 months' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed the judgment. *Parmley v. State*, CACR 04-692 (Ark. App. Mar. 2, 2005). Appellant filed a pro se petition for postconviction relief in the trial court that was dismissed as untimely, and this court dismissed the appeal of that order on the same basis. *Parmley v. State*, CR 06-204 (Ark. Apr. 27, 2006) (per curiam). Appellant subsequently filed a pro se petition for writ of habeas corpus in the circuit court in the county where appellant is incarcerated, and the circuit court dismissed the petition. Appellant now brings this appeal of the decision dismissing his petition for writ of habeas corpus.

This court does not reverse a denial of postconviction relief unless the trial court's findings

are clearly erroneous or clearly against the preponderance of the evidence. *See Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there is evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *See Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002).

In this case, appellant claimed in his petition that the trial court was without jurisdiction because he was arrested in Hot Spring County and Garland County is not within the same judicial district as Hot Spring County. He argued that the trial court lacked subject-matter jurisdiction for this reason. The circuit court found that the petition did not demonstrate that the trial court lacked jurisdiction or that the commitment was invalid on its face because the trial court had personal jurisdiction over the petitioner and jurisdiction over the subject matter. The court concluded that the petition did not state facts or advance evidence to support the claim.

A writ of habeas corpus is only proper when a judgment of conviction is invalid on its face or when a circuit court lacked jurisdiction over the cause. *Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). The burden is on the petitioner to establish one of these two bases; otherwise, there is no basis for a finding that a writ of habeas corpus should issue. *Young v. Norris*, 365 Ark. 219, 226 S.W.3d 797 (2006) (per curiam). The petitioner must plead either the facial invalidity or the lack of jurisdiction and make a "showing by affidavit or other evidence, [of] probable cause to believe" he is illegally detained. *Id.* at 221, 226 S.W.3d at 798-799.

Appellant contends the trial court erred in determining that the trial court had subject-matter jurisdiction because the crime at issue in his trial occurred in Hot Spring County and that it was error to fail to grant the writ. He argues on appeal that *Waddle v. Sargent*, 313 Ark. 539, 855 S.W.2d 919

(1993), supports this argument. The petition cited *Waddle* for the proposition that an allegation that the trial court lacked territorial jurisdiction is cognizable in a habeas proceeding.

Local jurisdiction, or territorial jurisdiction, deals with where an offense is to be tried, and not with whether the state lacks the basic authority to apply its law to the events in question. *See State v. Osborn*, 345 Ark. 196, 45 S.W.3d 373 (2001). Questions of local jurisdiction are not issues of subject-matter jurisdiction, and, unlike true questions of subject-matter jurisdiction, may be waived. *See Davis v. Reed*, 316 Ark. 575, 873 S.W.2d 524 (1994). But, an allegation that an offense occurred outside the territorial jurisdiction of the court is cognizable in a habeas proceeding. *Cloird v. State*, 349 Ark. 33, 76 S.W.3d 813 (2002) (per curiam). The petition may have incorrectly referenced the type of jurisdiction at issue as subject-matter jurisdiction, but it did state facts in support of a claim that the trial court lacked local jurisdiction and offered a portion of the information charging appellant and an affidavit from the tax assessor of Hot Spring County as evidence that the arrest was within that county. Appellant did plead sufficient facts to support his claim that the trial court lacked jurisdiction, and the circuit court erred in determining otherwise.

We cannot say, based upon the petition, whether the trial court erred to decline to grant the writ, however. Appellant offered evidence that his arrest occurred outside of Garland County, but appellant was charged with possession after he entered a gated community, drove around within that community for some time, and was eventually detained and arrested at the location appellant asserts was in Hot Spring County. The drug paraphernalia was found in the truck appellant was driving.

Territorial jurisdiction is controlled by statute. *Ridling v. State*, 360 Ark. 424, 203 S.W.3d 63 (2005). As the law that was applicable at the time of the offense committed on September 13, 2001, Arkansas Code Annotated § 16-88-105 (Repl. 2005) limited jurisdiction of circuit courts to

“offenses committed within the respective counties in which they are held.” We cannot, however, determine whether the offense was committed in only a single county because appellant entered the community and drove around within it before his arrest. If applicable, Arkansas Code Annotated § 16-88-108 (Repl. 2005) provided for jurisdiction in either county where the offense was committed in two or more counties.

Appellant’s petition established probable cause that appellant’s possession of drug paraphernalia did, at least in part, occur in Hot Spring County. It did not, however, conclusively show that some part of the offense was not committed in Garland County, as well. Accordingly, we remand to the circuit court for a hearing on the issue in accord with this opinion. The circuit court shall provide findings of fact and conclusions of law as to whether the offense was committed entirely within Hot Spring County and was therefore outside of the trial court’s jurisdiction. The circuit court’s findings of fact and conclusions of law should be returned to this court within 120 days of the date of this opinion. Upon receipt of the findings, this court will issue a final disposition concerning whether the writ should issue. *See Cloird*, 349 Ark. at 43, 76 S.W.3d at 819.

Remanded.